CURRENT DECISIONS

ALIEN ENEMIES—RIGHT TO SUE—AUSTRIAN SUING AS NEXT FRIEND FOR INFANT SON.—A native of Austria, residing in North Carolina, brought suit as next friend for his infant son to recover damages for personal injuries sustained by the latter. The United States declared war against Austria-Hungary after the verdict in the suit was returned but before the judgment was entered. Over the defendant's objection judgment was entered for the plaintiff. *Held,* that the suit was maintainable. *Krachanake v. Acme Mfg. Co.* (1918, N. C.) 95 S. E. 851.

The case, which is of first impression in North Carolina, correctly applies the general rule that the right of an alien enemy to sue in our courts turns upon his residence, not his nationality. The opinion contains an interesting review of the authorities, and refers to Mr. Picciotto's article in (1917) 27 YALE LAW JOURNAL, 167.

ALIENS—NATURALIZATION—TEMPORARY NATURALIZATION FOR SERVICE IN ARMY REFUSED.—The Act of May 9, 1918 (Public, No. 144, 65th Congr.) authorized the naturalization of aliens who enter the service of the Army or Navy of the United States. The examination of certain alien soldiers, applicants for naturalization under this statute, disclosed their intention not to remain in the United States after discharge from the service, but to return to their native country to remain there permanently. *Held,* that the applicants were not entitled to naturalization. *In re Naturalization of Aliens in Service of Army or Navy* (1918, E. D. Mo.) 250 Fed. 316.

The decision seems entirely correct. Naturalization obtained without intent to reside permanently in the United States has always been regarded by the State Department as fraudulent. This view is confirmed by section 15 of the Act of June 29, 1906 (34 Stat. L. 601) which construes the naturalization as having been acquired in bad faith if the citizen establishes his permanent residence abroad within five years of his admission to citizenship, and by section 2 of the Act of March 2, 1907 (34 Stat. L. 1228) which provides for a forfeiture of citizenship if the naturalized citizen shall have resided two years in his native country. A person cannot seek temporary naturalization in the United States. See *Luria v. United States* (1913) 231 U. S. 9, 34 Sup. Ct. 10.

ARMY AND NAVY—INDUCTION UNDER DRAFT ACT—COMPULSORY SURGICAL OPERATION ON DRAFTEE.—A registrant was certified into military service, and, though suffering from hernia, the local board and the examining army officers did not reject him. Instead, they ordered him to undergo a surgical operation. He refused to submit, and in *habeas corpus* proceedings claimed his release on the ground that, as he could not be compelled to submit to the operation, he was physically disabled and entitled to discharge from further military duty. *Held,* that the registrant was not entitled to discharge and that the writ must be dismissed. *De Genaro v. Johnson, Brigadier-General* (1918 E. D. N. Y.) 249 Fed. 504.

By the Selective Draft Act and sections 1116 and 1342 of the U. S. Revised Statutes the decision of the examining board, exemption or military, on a question of fact is final and cannot be reviewed on *habeas corpus. In re Traina* (1918, E. D. N. Y.) 248 Fed. 1004. After his induction into service the registrant is subject to military law and cannot obtain his discharge from the army through

the civil courts. By military law a soldier may be required to submit to an operation designed to increase his fitness for service and not endangering his life. See (1917) Manual for Courts-Martial, U. S. Army, 33.

BANKRUPTCY—PREFERENCES—REVIVING BARRED DEBT AS PREFERENCE.—The day before a petition in bankruptcy was filed against him, a debtor made a payment upon a statute-barred debt, intending to revive it. The debtor was aware of his insolvent condition, the creditor was not. The creditor, offering to restore the payment, filed his claim on the revived debt. *Held,* that the claim was allowable since its revival could not be considered a preference, the creditor being unaware of the insolvency. *In re Salmon* (1917, C. C. A. 2d) 249 Fed. 300.

The decision in the instant case overrules the judgment of the lower court reported in (1916, S. D. N. Y.) 239 Fed. 413. There the revival was treated as an "incumbrance" and held void under section 67e of the Bankruptcy Act. This view, as pointed out in (1917) 27 YALE LAW JOURNAL, 126, is highly questionable and unsupported by authority. It is submitted that the Circuit Court of Appeals took the proper view of the situation when it regarded the revival merely as a preference and not as an "incumbrance."

CONSTITUTIONAL LAW—EX POST FACTO LAWS—NEW YORK PAROLE LAW VALID.—The Parole Commission Act of New York (Laws 1915, ch. 579), providing for a system of indeterminate sentence and parole for criminals, does not become actually effective in a given territory until certain local authorities appoint a Parole Commission. The relator in a writ of *habeas corpus* maintained that as applied to him the act was *ex post facto.* The crime for which he was imprisoned was committed after the passage by the legislature of the law in question but before it had become fully operative in the part of the state concerned by the appointment of a Parole Commission. *Held,* that the law was not *ex post facto* as applied to the relator. *People ex rel. Cerzosie v. The Warden of New York County Penitentiary* (1918, N. Y.) 119 N. E. 564.

The decision, which apparently has no exact precedent to support it, seems equally sensible and sound. The law in question obviously does not in any way produce the kind of unfair result against which the constitutional prohibition of *ex post facto* laws is directed. The decision may profitably be compared with *Neal v. Hines* (1918, Ky.) 203 S. W. 578, holding constitutional, as applied to persons already convicted of crime, a statute extending the period during which parole could not be granted. There, however, the original parole statute expressly provided that the persons described should be eligible to parole "as now or may hereafter be prescribed." (The attention of the learned reader is called to an editorial note in (1918) 34 L. QUART. REV. 9, pointing out that the expression *ex postfacto* is in current usage incorrectly written and printed as three words, *ex post facto.* Among the first to commit this error was Lord Coke; he was followed by Blackstone, Bentham and Austin. So it is not surprising that the error became general.)

CONTRACTS—THIRD PARTY BENEFICIARY—SUIT BY DONEE-BENEFICIARY.—A husband promised his wife on her death bed that in consideration of her executing a certain will he would himself bequeath a specified sum to a favorite niece of the wife. The niece sued the husband's executor for breach of the above promise. *Held* (three judges dissenting), that the niece was entitled to maintain an action on the contract. *Seaver v. Ransom* (1918, N. Y.). Decided Oct. 1, 1918.